



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 31, 1994

Mr. Kenneth C. Dippel  
Cowles & Thompson  
901 Main Street, Suite 4000  
Dallas, Texas 75202-3793

OR94-531

Dear Mr. Dippel:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27075.

The Town of Addison (the "city") has received a request for the personnel files of an officer and a civilian dispatcher and for "any and all documents regarding the investigation of [the civilian dispatcher] for racial remarks made during the course of his employment." The city has submitted certain documents to our office and asserts that exhibits C, F, G, H, I, and J are excepted from required public disclosure under sections 552.101, 552.102, 552.103 and 552.111 of the Government Code. The city further asserts that exhibits D and E are excepted from required public disclosure under sections 552.101 and 552.102, and that the former exhibit is also confidential under the federal Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681t.

We address your section 552.103 claim first because it is dispositive of most of the exhibits. Section 552.103 excepts from required public disclosure information relating to litigation "to which the state or political subdivision . . . is or may be a party." Gov't Code § 552.103(a). Section 552.103 requires concrete evidence that litigation is realistically contemplated; it must be more than mere conjecture. Open Records Decision Nos. 518 (1989) at 5; 328 (1982). Thus, to secure the protection of this exception, a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990); *see also* Open Records Decision No. 588 (1991) (contested case under Administrative Procedure Act is litigation for purposes of section 552.103 exception).

This office has held that the filing of a complaint with the federal Equal Employment Opportunity Commission ("EEOC") demonstrates that litigation may be reasonably anticipated. See Open Records Decision Nos. 336 (1982); 281 (1981).

You have informed us that the civilian dispatcher whose records have been requested is alleged to have made racial slurs, and that the officer whose records have been requested has filed an EEOC complaint alleging that he has been the subject of racial slurs by his co-workers. Under open records decisions of this office, the city has demonstrated that litigation may be reasonably anticipated. We also believe that the city has demonstrated that exhibits C, F, G, H, I, and J<sup>1</sup> relate to the EEOC complaint. Therefore, we conclude that the city may withhold these records under section 552.103.

Next, we address exhibits D and E. Exhibit D, a credit history report, is confidential under federal law and must not be released. See Open Records Decision No. 373 (1983) at 2. Exhibit E contains two sets of fingerprints. These documents include the officer's home address. Section 552.117(1)(B) makes confidential the home address and telephone number of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. Assuming that the officer is a peace officer as defined by article 2.12 of the Code of Criminal Procedure, his home address is confidential and must not be released.

You assert that exhibit E in its entirety is protected from required public disclosure under the doctrine of common-law privacy. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." In order for information to be protected from public disclosure under the common-law right of privacy as incorporated by section 552.101, the information must meet the criteria set out by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

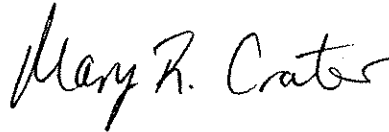
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<sup>1</sup>Exhibit C contains records from the officer's personnel file. Exhibits G, H, and I contain records from the personnel file of the dispatcher. Exhibit J contains records relating to the investigation of the dispatcher for alleged racial remarks.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing former section 3(a)(1) of article 6252-17a, V.T.C.S.). Section 552.102 protects personnel file information only if its release would cause an invasion of privacy under the test articulated for common-law privacy under section 552.101. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.) (court ruled that test to be applied in decision under former section 3(a)(2), V.T.C.S. art. 6252-17a, was the same as that delineated in *Industrial Foundation* for former section 3(a)(1), V.T.C.S. art. 6252-17a). You cite no authority for your contention that fingerprints are "highly intimate or embarrassing," nor do we believe this to be the case. Therefore, we conclude that exhibit E is not excepted from required public disclosure under the doctrine of common-law privacy. With the exception noted above, it must be released.

If you have questions about this ruling, please contact our office.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Open Government Section

MRC/SLG/rho

Ref.: ID# 27075

Enclosures: Submitted documents

cc: Ms. Laura Miller  
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(w/o enclosures)